

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Wade Eugene Bradford,

Petitioner,

v.

David Shinn, et al.,

Respondents.

No. CV-22-00533-PHX-SRB

ORDER

Petitioner, Wade Eugene Bradford filed a timely Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody and later filed an Amended Petition raising ten grounds for relief. Respondents file a Limited Answer asserting that Grounds One and Two were not cognizable habeas claims and that Grounds Three through Ten were procedurally defaulted with the exception of one ineffective assistance of counsel claim raised within the facts section of Ground Five. Petitioner filed a Reply to the Limited Answer.

The Magistrate Judge issued her Report and Recommendation on May 26, 2023 finding that Grounds One and Two were not cognizable claims, that Grounds Three through Ten (with the exception of one ineffective assistance claim) were procedurally defaulted without excuse, and that the ineffective assistance claim was without merits. The Magistrate Judge recommended that Grounds One and Two be dismissed with prejudice for failing to raise cognizable habeas claims, that Grounds Three through Ten be dismissed for failure to exhaust and that the claim within Ground Five that counsel was ineffective

1 for failing to investigate Petitioner's mental health history be denied on the merits. The
2 Magistrate Judge also recommended that a certificate of appealability and leave to proceed
3 in forma pauperis on appeal be denied.

4 After receiving an extension of time to file his Objections to the Report and
5 Recommendation until July 20, 2023, Petitioner filed a 61-page Objection which was later
6 stricken by the Court. Petitioner then was granted another extension of time to file
7 Objections. Petitioner filed his Objections on August 24, 2023. Respondents have filed
8 their Response to the Objections and Petitioner has filed an unauthorized Reply.¹

9 Petitioner first argues in his Objections that his *pro se* Petition was not liberally
10 construed by the Magistrate Judge. This is demonstrably untrue as shown by the Magistrate
11 Judge's liberal reading of Petitioner's claim of ineffective assistance of counsel and
12 consideration of that claim on the merits despite its questionable lack of exhaustion.

13 In his remaining Objections, Petitioner object to virtually everything in the Report
14 and Recommendation listing 20 objections but failing to explain how the Magistrate Judge
15 erred in her analysis and recommendations. He takes issues with the accurate recitation of
16 the state court record and offers instead his own version of the record based on his affidavit.
17 As Respondents argue, the Magistrate Judge was required to make a Report and
18 Recommendation on the Amended Habeas Petition. She was not required to consider
19 Petitioner's 89-page affidavit detailing his narrative of the state court proceedings, his
20 alleged conditions of confinement, his claimed interaction with his attorneys and his mental
21 health history. The Magistrate Judge's task was to analyze the state court record for
22 constitutional deprivations if such claims were exhausted in state court before Petitioner
23 brought them to federal court seeking habeas relief.

24 The Court rejects Petitioner's Objections because they fail to demonstrate any error
25 in the Magistrate Judge's Report and Recommendation, are a re-argument of the Petition,
26 and suggest obligations on the federal court to rule on claims not cognizable on habeas
27 review and to decide unexhausted claims on the merits. The Court agrees with the

28 ¹ Petitioner has filed other Motions with the Court which will be addressed later in this
Order.

1 Magistrate Judge that Petitioner has made no showing of actual innocence or of a “cause
2 and prejudice” that would excuse his procedural default.

3 Petitioner objects to the Magistrate Judge’s recommendation for denial of his claim
4 in Ground Five that his trial attorney was ineffective in failing to investigate his mental
5 health history. But as the Magistrate Judge related, Petitioner’s counsel filed a Rule 11
6 Motion for an evaluation of Defendant’s competency to stand trial, the Motion was granted,
7 Petitioner was evaluated by two doctors who prepared written reports presented to the trial
8 judge, and the trial judge found Petitioner competent. The Court agrees with the Magistrate
9 Judge that Petitioner has failed to demonstrate that any further investigation by his trial
10 counsel would have resulted in a finding that he was not competent to stand trial.

11 The Court agrees with the Report and Recommendations of the Magistrate Judge
12 and Petitioner’s objections will be overruled.

13 The Court will also deny the following motions for the following reasons:

14 Petitioner’s Motion for Leave to file Motion to Amend Petition (Doc. 53) is denied.
15 Petitioner offered this motion in lieu of filing objections to the Report and
16 Recommendation. He failed to explain how he wished to amend his already amended
17 Petition and how any amendment would cure the failures to exhaust and the non-cognizable
18 claims.

19 Petitioner’s Motion for Leave Court Consider Affidavit-Brain Damage (Doc. 58)
20 and Motion for Leave Court Consider Supporting Documents to Petitioner’s Objections to
21 Magistrate’s Report and Recommendation (Doc. 62) are denied. The 12-page affidavit of
22 Petitioner and the 33-pages of additional argument also repeat the same arguments
23 previously raised before the Magistrate Judge and are nothing more than additional
24 meritless objections to the Report and Recommendation.

25 Petitioner’s Motion to Appoint Counsel (Doc. 67) and Motion to Modify Custody
26 to Release on Bail (Doc. 70) are denied. The Court has found no merit to Petitioner’s
27 Objections to the Magistrate Judge’s Report and Recommendation and agrees with its
28 recommendations for dismissal and denial of the Petition. Because the Court has concluded

1 that Petitioner is not being held in violation of the Constitution and laws of the United
2 States, no release could be justified even if this Court had the authority to grant it.
3 Moreover, because the Petition is meritless and the Court will be denying a Certificate of
4 Appealability, there is no basis for the Court to consider appointment of counsel.

5 IT IS ORDERED overruling Petitioner's Objections to Magistrate's Report and
6 Recommendation. (Doc. 57)

7 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
8 Magistrate Judge as the Order of this Court. (Doc. 43)

9 IT IS FURTHER ORDERED dismissing Grounds One and Two of the Amended
10 Petition for failure to allege cognizable habeas claims.

11 IT IS FURTHER ORDERED dismissing Grounds Three and Four and Six through
12 Ten of the Amended Petition for failure to exhaust.

13 IT IS FURTHER ORDERED denying Ground Five alleging ineffective assistance
14 of trial counsel for alleged failure to investigate Petitioner's mental health history.

15 IT IS FURTHER ORDERED denying Petitioner's Motion for Leave to file Motion
16 to Amend Petition. (Doc. 53)

17 IT IS FURTHER ORDERED denying Petitioner's Motion for Leave Court
18 Consider Affidavit-Brain Damage and Motion for Leave Court Consider Supporting
19 Documents to Petitioner's Objections to Magistrate's Report and Recommendation. (Docs
20 58 and 62)

21 IT IS FURTHER ORDERED denying Petitioner's Motion to Appoint Counsel and
22 Motion to Modify Custody to Release on Bail. (Docs. 67 and 70)


23 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to
24 proceed in forma pauperis on appeal because the denial of the motion is justified by a plain
25 procedural bar and jurists of reason would not find the procedural ruling debatable and
26 because Petitioner has not made a substantial showing of the denial of a constitutional right.

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1 IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.
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3 Dated this 21st day of November, 2023.
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8 Susan R. Bolton
9 United States District Judge
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